

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
BEAUFORT DIVISION

Darian Johnston,)	C.A. No. 9:09-0435-TLW-BM
)	
Plaintiff,)	
)	
-versus-)	ORDER
)	
Officer Sgt. Marie Davis,)	
Wateree Correctional Officer sued in her)	
individual capacity and her official capacity; and)	
John Doe, (other Unknown or Unnamed Defendant))	
)	
Defendants.)	
)	

This matter is now before the undersigned for review of the Report and Recommendation (“the Report”) filed by United States Magistrate Judge Bristow Marchant, to whom this case had previously been assigned pursuant to 28 U.S.C. § 636(b) and Local Rule 73.02(B)(2) (D.S.C.). In his Report, Magistrate Judge Marchant recommends that the “Unknown Defendant” John Doe’s motion to dismiss be granted, and that this party be dismissed as a party Defendant at this time without prejudice. The Plaintiff has filed objections to the Report.

In conducting this review, the Court applies the following standard:

The magistrate judge makes only a recommendation to the Court, to which any party may file written objections. . . . The Court is not bound by the recommendation of the magistrate judge but, instead, retains responsibility for the final determination. The Court is required to make a de novo determination of those portions of the report or specified findings or recommendation as to which an objection is made. However, the Court is not required to review, under a de novo or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the Report and Recommendation to which no objections are addressed. While the level of scrutiny entailed by the Court's review of the

Report thus depends on whether or not objections have been filed, in either case, the Court is free, after review, to accept, reject, or modify any of the magistrate judge's findings or recommendations.

Wallace v. Housing Auth. of the City of Columbia, 791 F.Supp. 137, 138 (D.S.C. 1992) (citations omitted).

In light of this standard, the Court has reviewed, de novo, the Report and the objections thereto. The Court accepts the Report, as outlined herein. Plaintiff filed objections to the report in which he indicates that he “thought that by stating (unknown and unnamed) that who ever else was involved in the violation the jury would seek out.” He continues on to indicate that

Sammy Roberts is a sergeant in a supervisors position he should have stop Sgt. Marie Davis from injuring me he is just as guilty as Sgt. Marie Davis Sgt. Sammy Roberts handcuffed me after Sgt. Marie Davis assaulted and injured me he should be added as a defendant since Sgt. Sammy Roberts did not slamm my head into a block wall giving me a head injurie as did Sgt. Marie Davis I will not add him to the Complaint unless the Court disagrees.

To the extent that Plaintiff has yet to identify any person other than the Defendant Davis, and now Sgt. Roberts, as a party defendant in this case, the undersigned concludes that it is appropriate to dismiss the “Unknown Defendant” as a party defendant in this case at this time, without prejudice. As to Sgt. Sammy Roberts, the Court finds it appropriate to construe plaintiff’s “objection” filing as a motion to amend the complaint to add Sgt. Sammy Roberts as a defendant. The Clerk shall docket this document as objections to the report, and also as a motion to amend. Thereafter, the case shall be remanded to the magistrate judge for consideration of the motion to amend.

THEREFORE, IT IS HEREBY ORDERED that the Magistrate Judge’s Report is **ACCEPTED** (Doc. # 50); plaintiff’s objections shall be filed as objections to the report and also as a motion to amend (Doc. # 53); the “Unknown Defendant” John Doe’s motion to dismiss is granted,

and this party is dismissed as a party Defendant at this time, without prejudice (Doc. # 19); and this case is remanded to the magistrate judge for consideration of plaintiff's motion to amend.

IT IS SO ORDERED.

s/ Terry L. Wooten
TERRY L. WOOTEN
UNITED STATES DISTRICT JUDGE

August 28, 2009
Florence, South Carolina